APPENDIX

1. Article 1118x, Texas Revised Civil Statutes Annotated (Vernon Supp. 1982-83) Provides In Part:

Section 1. The legislature finds that:

(a) A dominant part of the state's population is located in its rapidly expanding metropolitan areas which generally cross the boundary lines of local jurisdictions and often extend into two or more counties;

(b) The concentration of population in such areas is accompanied by a corresponding concentration of motor vehicles which are generally powered by internal combustion engines that emit pollutants into the air, which emissions result in increasing dangers to the public health and welfare, including damage to and deterioration of property as well as harm to persons, and hazards to air and ground transportation;

(c) Such concentration of motor vehicles places an undue burden on existing streets, freeways and other traffic ways, resulting in serious vehicular traffic congestion that retards mobility of persons and property and adversely affects the health and welfare of the citizens and the economic life of the areas;

(d) The proliferation of the use of motor vehicles for passenger transportation in such areas is caused in substantial part by the absence or inefficiency and high cost of mass transit services available to the citizens of such areas, and it is in the public interest to encourage and provide for efficient and economical local mass rapid transit systems in such areas for the benefit and convenience of the people and for the purpose of improving the quality of the ambient air therein and reducing vehicular traffic congestion; and

(e) The inalienable right of all natural persons to use the air for natural purposes does not vest in any person the right to pollute the air by artificial means, but such artificial use is subject to regulation and control by the state.

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Sec. 3. (a) The governing body of a principal city in a metropolitan area may, on its own motion, shall, as provided in Subsection (b) of this section, and shall, upon

being presented with a petition so requesting signed by not less than 5,000 qualified voters residing within such metropolitan area, institute proceedings to create a rapid transit authority in the manner prescribed in this section.

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Sec. 5. (a) After the original board is organized, at such time as it deems implementation of the authority to be feasible, it shall call a confirmation and tax election in accordance with the provisions of this section.

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Sec. 6. (a) The authority, when created and confirmed, shall constitute a public body corporate and politic, exercising public and essential governmental functions, having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act, incuding, but not limited to, the following powers granted in this section.

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(e) The authority shall have the power to acquire, construct, complete, develop, own, operate and maintain a system or systems within its boundaries, and both within and without the boundaries of incorporated cities, towns and villages and political subdivisions, and for such purposes shall have the right to use the streets, alleys, roads, highways and other public ways and to relocate, raise, reroute, change the grade of, and alter the construction of, any street, alley, highway, road, railroad, electric lines and facilities, telegraph and telephone properties and facilities, pipelines and facilities, conduits and facilities, and other properties, whether publicly or privately owned, as necessary or useful in the construction, reconstruction, repair, maintenance and operation of the system, or to cause each and all of said things to be done at the authority's sole expense. . . .

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(g) The authority shall have the right of eminent domain . . . .

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(n) The authority shall by resolution make all rules and regulations governing the use, operation and maintenance of the system and shall determine all routings and change the same whenever it is deemed advisable by the authority.

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(p) The acquisition of any land or interest therein pursuant to this Act, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of the authority's system and facilities, and the exercise of any other powers herein granted an authority, are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity.

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Sec. 6C. (a) The acquisition of any land or interest in land pursuant to this Act; the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of the authority's system and facilities; and the exercise of any other powers granted an authority, including without limitation the rights, powers, and authority relating to station or terminal complexes as provided in this section, are declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity for public use and public benefit.

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Sec. 7. (a) The authority shall have no power to assess, levy or collect any ad valorem taxes on property, nor to issue any bonds or notes secured by ad valorem tax revenues. The authority, however, shall have the full power to issue bonds and notes, from time to time and in such amounts as it shall consider necessary or appropriate, for the acquisition, purchase, construction, reconstruction, repair, equipping, improvement or extension of such rapid transit system or systems and all properties thereof whether real, personal or mixed. . . .

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Sec. 8. (a) Subject to approval at an election, the board of an authority shall be authorized to levy and cause to be collected motor vehicle emission taxes as herein provided. . . .

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Sec. 11A. (a) In addition to or in lieu of the motor vehicle emission taxes provided for in this Act, the board of an authority may levy and collect any kind of tax, other than an ad valorem tax on property, which is not prohibited by the Texas Constitution.

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Sec. 11B. (A) Subject to approval at a tax election in accordance with this Act, the board of an authority shall be authorized to levy, collect and impose a local sales and use tax for the benefit of the authority, the sales tax portion of which shall not exceed one percent on receipts from the sale of all taxable items within the authority area which are subject to taxation under the provisions of the Limited Sales, Excise and Use Tax Act, as enacted and as heretofore or hereafter amended. . . .

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Sec. 12. The responsibility for the management, operation and control of the properties belonging to an authority shall be vested in its board. The board may:

(a) employ all persons, firms, partnerships or corporations deemed necessary by the board for the conduct of the affairs of the authority, including, but not limited to, a general manager, bookkeepers, auditors, engineers, attorneys, financial advisers and operating or management companies, and prescribe the duties, tenure and compensation of each. . . .

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Sec. 13. The board may adopt and enforce reasonable rules and regulations:

(a) to secure and maintain safety and efficiency in the operation and maintenance of its facilities;

(b) governing the use of the authority's facilities and services by the public and the payment of fares, tolls and charges;

(c) regulating privileges on any land, easement, right-of-way, rolling stock or other property owned or controlled by the authority; and

(d) regulating the collection and payment of emission taxes levied by the board.

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Sec. 13A. Any authority established hereunder shall be within the definition of "unit of government" as defined by the Texas Tort Claims Act, as amended (Article 6252-19, Vernon's Texas Civil Statutes), and all operations of an authority are deemed to be essential governmental functions and not proprietary functions for all purposes, including the application of the Texas Tort Claims Act.

2. Article 6663b, Texas Revised Civil Statutes Annotated (Vernon 1977) Provides In Pertinent Part:

Section 1. (a) The State Department of Highways and Public Transportation:

(1) may purchase, construct, lease, and contract for public transportation systems in the state;

(2) shall encourage, foster, and assist in the development of public and mass transportation, both intracity and intercity, in this state;

(3) shall encourage the establishment of rapid transit and other transportation media;

(4) shall develop and maintain a comprehensive master plan for public and mass transportation development in this state;

(5) shall assist any political subdivision of the state in procuring aid offered by the federal government for the purpose of establishing or maintaining public and mass transportation systems;

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Sec. 2. On the effective date of this Act, all programs, contracts, assets, and personnel of the Texas Mass Transportation Commission are transferred to the State Department of Highways and Public Transportation. The comptroller of public accounts and the State Board of Control shall assist in the orderly implementation of this transfer.

3. Article 6663c, Texas Revised Civil Statutes Annotated (Vernon 1977) Provides In Pertinent Part:

Section 1. (a) The legislature finds that:

(1) transportation is the lifeblood of an urbanized society, and the health and welfare of that society depend on the provision of efficient, economical, and convenient transportation within and between urban areas;

(2) public transportation is an essential component of the state's transportation system;

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(b) The purposes of this Act are to provide:

(1) improved public transportation for the state through local governments acting as agents and instrumentalities of the state;

(2) state assistance to local governments and their instrumentalities in financing public transportation systems to be operated by local governments as determined by local needs; and

(3) coordinated direction by a single state agency of both highway development and public transportation improvement.

4. The Fair Labor Standards Act Of 1938, 29 U.S.C. § 201 *et seq.* (1976) Provides In Part:

29 U.S.C. § 203:

As used in this chapter—

(x) "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States

(including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State; or any interstate governmental agency.

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29 U.S.C. § 219:

If any provision of this chapter or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

5. The Urban Mass Transportation Act Of 1964, 49 U.S.C. § 1601, *et seq.* (1976 & Supp. V 1981) Provides In Part:

49 U.S.C. § 1601b:

The Congress finds that—

(1) over 70 per centum of the Nation's population lives in urban areas;

(2) transportation is the lifeblood of an urbanized society and the health and welfare of that society depends upon the provision of efficient economical and convenient transportation within and between its urban areas;

(3) for many years the mass transportation industry satisfied the transportation needs of the urban areas of the country capably and profitably;

(4) in recent years the maintenance of even minimal mass transportation service in urban areas has become so financially burdensome as to threaten the continuation of this essential public service;

(5) the termination of such service or the continued increase in its cost to the user is undesirable, and may have a particularly serious adverse effect upon the welfare of a substantial number of lower income persons;

(6) some urban areas are now engaged in developing preliminary plans for, or are actually carrying out, comprehensive projects to revitalize their mass transportation operations; and

(7) immediate substantial Federal assistance is needed to enable many mass transportation systems to continue to provide vital service.

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49 U.S.C. § 1608(d):

None of the provisions of this chapter shall be construed to authorize the Secretary to regulate in any manner the mode of operation of any mass transportation system with respect to which a grant is made under section 1602 of this title or, after such grant is made, to regulate the rates, fares, tolls, rentals, or other charges fixed or prescribed for such system by any local public or private transit agency; but nothing in this subsection shall prevent the Secretary from taking such actions as may be necessary to require compliance by the agency or agencies involved with any undertakings furnished by such agency or agencies in connection with the application for the grant.